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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re LOI PHAT NGUYEN

on Habeas Corpus.

G053501

(Super. Ct. No. 12WF2601)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to file a timely notice of appeal. Petition granted.

Howard C. Cohen for Petitioner.

Kamala D. Harris, Attorney General, and Julie L. Garland, Assistant Attorney General for Respondent.

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THE COURT:*

Petitioner, Loi Phat Nguyen, seeks relief from the failure to file a timely notice of appeal from his criminal conviction. We agree Nguyen is entitled to relief and the petition is granted.

Following a jury trial, Loi Phat Nguyen was convicted of a number of criminal offenses and sentenced to a total term of 70 years to life. In his declaration, trial counsel states that after the sentencing hearing, Nguyen advised him that he wanted to appeal his conviction. According to trial counsel, he advised Nguyen that he would file a notice of appeal on his behalf, but inadvertently filed the notice of appeal late. (Cal. Rules of Court, rule 8.308(a).) When counsel attempted to file the notice of appeal, the superior court stamped the notice of appeal “RECEIVED,” and transmitted a letter to counsel that explained the last day to file a timely notice of appeal was December 18, 2015.

The Attorney General does not oppose granting the petition without the issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728.)

The principle of constructive filing of the notice of appeal is applied in situations where trial counsel advises a criminal defendant that he will file a notice of appeal on his client’s behalf, and then fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) Because trial counsel has a duty to file a proper notice of appeal on his client’s behalf, (Pen. Code § 1240.1, subd. (b)) Nguyen’s reasonable reliance on counsel’s promise to file a timely notice of appeal entitles him to the relief requested.

The petition is granted. The Clerk of the Superior Court is directed to file the notice of appeal that was received but not filed on March 2, 2016. Further proceedings, including preparation of the record on appeal, are to be conducted according

* Before O’Leary, P. J., Rylaarsdam, J., and Bedsworth, J.

to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.